Office Supreme Court, U.S.
FILED
JUL 2 1964
JOHN F. DAVIS, CLERK

No. 993

In the Supreme Court

of the United States

MITCHELL BROS. TRUCK LINES,
a corporation,

Appellant,

v.

UNITED STATES OF AMERICA, and
INTERSTATE COMMERCE COMMISSION,

Appellees.

On Appeal from the United States District Court for the District of Oregon

PETITION FOR REHEARING

WILLIAM F. WHITE,
1200 Jackson Tower, Portland, Oregon,
Attorney for Appellant,
NORMAN E. SUTHERLAND,
WHITE, SUTHERLAND & WHITE,
1200 Jackson Tower, Portland, Oregon,
Of Counsel

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

In the Supreme Court
of the United States

MITCHELL BROS. TRUCK LINES,
a corporation,

Appellant,

v.

UNITED STATES OF AMERICA, and
INTERSTATE COMMERCE COMMISSION,

Appellees.

On Appeal from the United States District Court for the District of Oregon

PETITION FOR REHEARING

Appellant ("Mitchell") respectfully petitions this Court for a rehearing of its decision of June 15, 1964 which summarily affirmed the judgment of the Court below:

The inescapable meaning of the controverted language:

> "*Building materials and heavy machinery*, including heavy steel girders, steel pipe, boilers, water works supplies ad plumbing goods, cement, cast

stone, wooden pipe and tanks (set up or knocked down), and fabricated steel reinforcing bars, and other commodities of similar nature."

still remains that Michell as a motor carrier was authorized by the Commission to transport within the generic commodity description of *Building materials and Heavy Machinery* the nine specified commodities and others of similar nature to the nine as set forth as being included within the description. This simple meaning of plain language is compelled by not only the cardinal rule that all words, if possible, must be given effect lest a portion become emasculated, *United States* v. *Menasche* (1955) 348 US 528, 540; *Whitehouse Trucking* v. *Pre-Fab Transit* (1957) 71 M.C.C. 155, 157, but, also by the maxim of *noscitur a sociis*, to the effect that words are known by the company they keep. *Jarecki* v. *G. D. Searle & Co.* (1961) 367 U.S. 303, 307.

By affirming the judgment of the Court below this Court has given a judicial blessing to the clearly erroneous view of the Commission that Mitchell cannot transport any of the nine specified commodities or others of similar nature unless they should also be *building materials* or *heavy machinery* as the Commission restrictively considers such to be.[1] The Commission does not have the dog wag his tail but rather his tail the dog.

---

[1] The Commission refuses to permit any of the subsequent 36 words of the description to have any effect upon *building materials* or *heavy machinery* and upon these later words imposes its own meaning and connotations as though each were isolated. Its interpretation is expressed in footnote to the District Court's opinion (J.S. 29):

". . . Obviously, all of the commodities listed following 'building materials and heavy machinery', including 'other com-

By affirming the judgment below this Court has gone beyond and contrary to its decision in *Nelson* v. *United States* (1958) 355 US 554 by holding, in effect, that the Commission can impose its intended use restriction on any words of a commodity description even though, if fairly construed, the words cannot admit to such a connotation. As subtle and refined as all this may seem to a very busy Court affirmance of the judgment nevertheless strikes at Mitchell's traffic heart and takes its property without due process of law.

If this appeal were to be considered upon a full hearing we are convinced this Court would not approve the Commission's cease and desist order which finds that Mitchell has "some notice" of an unlawful intended use of a commodity to be transported from the name of the consignee on a freight bill, and that because a reel of electric cable is consigned to a power company Mitchell must assume its intended use is not to be in connection with a building with the consequence it must launch an affirmative investigation of the facts while other carriers transporting the same

---

modities of similar nature', must be either building materials or heavy machinery, and since, as we have stated above, none of the involved commodities now under consideration are either building materials or heavy machinery, respondent may not transport them under the underscored part of the above description."

Of course the only reason the Commission does not view *electric cable* as a building material is on the assumption its intended use at time of transportation is not for the repair or construction of a building. An electric transformer is similar to a boiler and every bit as much heavy machinery within the description except that the Commission without regard for the description has otherwise classed it as an electrical appliance.

building materials need not do so. *Ace Lines, Inc. Investigation on Revocation* (1960), 78 M.C.L. 523. Such frustration of a motor carrier is intolerable and brings our government away from being one of law and closer to being one of men.

Equally as unsound is the edict of the Commission that *construction materials* now are to have such a refined intended use restriction that a motor carrier may not transport electric cable to repair a transmission line but only to erect a new one. This Court in *Nelson* v. *United States*, supra, permitted the Commission to indulge in its intended use "test" only if the words of a certificate fairly supported such a connotation. Where is it?

It is no answer that if Mitchell does not like its certificate as now interpreted by the Commission it may petition to reopen its grandfather proceedings had over a score of years ago and perhaps get the certificate modified. In fact, Mitchell's pending petition to reopen its grandfather proceedings has since this Court's decision been decided by the Commission at the Examiner's level against Mitchell. It is likewise a snare and delusion for the Commission to argue as it does in note 2, page 6 of its motion to affirm that should the Commission's "repair" restriction to *construction materials* cause Mitchell's service to become inadequate that it need only re-apply for new rights and get them by proving public convenience and necessity.

Help!

Respectfully submitted,

WILLIAM F. WHITE
Attorney for Appellant.

NORMAN E. SUTHERLAND,
White, Sutherland & White
1200 Jackson Tower,
Portland, Oregon
Of Counsel.

CERTIFICATE OF COUNSEL

This petition for rehearing is presented in good faith to this honorable Court and not for purposes of delay in any respect.

WILLIAM F. WHITE